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DECISION

THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

FILE: B-203937

DATE: October 5, 1981

MATTER OF: Dillon Supply Company

DIGEST:

Protest that quotations were not evaluated on a common basis under the terms of the request for quotations (RFQ) and that awardee's quotation did not meet the RFQ specifications, filed within 10 working days after the debriefing conference, at which the agency explained the evaluation and the protester first reviewed the awardee's quotation, is timely under 4 C.F.R. § 21.2(b)(2) (1981) and will be considered on the merits. The contracting agency is requested to provide a documented report on the merits of these bases of protest.

Dillon Supply Company protests the award of a contract to White Machinery Corporation for railroad car movers under request for quotations (RFQ) No. M-96446 issued by E.I. DuPont de Nemours & Company (DuPont), pursuant to its contract with the Department of Energy (DOE) to operate DOE's Savannah River Plant.

The RFQ, issued on March 10, 1981, requested quotations for railroad car movers equipped with minimum specification features, including pneumatic road tires and a spare coupler assembly. The coupler assembly was to be quoted as a separate item and quotations were to be made on an F.O.B. destination basis. The RFQ provided that evaluation of cost would be based on delivered price, availability, compliance with the listed specifications, and spare parts. Of the three quotations received, Dillon quoted a unit price of \$77,992 for the railroad car movers and \$6,800 for the coupler assembly; White quoted unit prices of \$78,775 and \$5,230, respectively, for these items. White's unit and extended prices, both inclusive and exclusive of the coupler assembly, for the railroad car

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movers are higher than Dillon's prices for the equipment on the same basis. However, because DuPont already had a spare coupler assembly for the type of railcar mover White offered, DuPont evaluated White's quotation for three railcar movers without the coupler price (\$236,265), but included the price of the coupler in evaluating Dillon's quotation (\$240,776). DuPont placed a verbal order for the equipment with White on June 3, which was confirmed by written order of June 18, 1981.

The protester was advised of the award during a June 17, 1981, telephone conversation with DOE personnel at the Savannah River Plant. Dillon confirmed this conversation by letter on the following day. On June 19, Dillon asked to review the contract file and met with DOE and DuPont personnel to do so on June 24, 1981. During the meeting, Dillon's representative told DuPont and DOE personnel that the firm's objections should be considered a protest and Dillon was advised that it had 10 days to confirm the protest in writing. There were further conversations between DOE and Dillon personnel on June 29 and July 1, 1981, concerning the fact that White's equipment had already been shipped to the DOE facility and denying Dillon's request to inspect the equipment upon delivery to the plant. We received Dillon's June 30 protest letter on July 7, 1981.

Dillon essentially contends that DuPont did not evaluate the firms' quotations on a common basis under the terms of the RFQ, but excluded White's spare coupler price, resulting in award to White for the railcar movers at a higher price. The protester also asserts that White's quotation does not comply with the RFQ requirement that the items be equipped with pneumatic road tires. Finally, Dillon claims that White originally quoted on an F.O.B. origin basis and was permitted to modify the quotation to F.O.B. destination and to absorb the additional freight charges.

DOE urges that the protest be dismissed as untimely filed. The agency asserts that because Dillon allegedly knew or should have known the basis of protest from the June 17 telephone conversation, the protest, filed with our Office more than 10 working days after that conversation, is untimely. 4 C.F.R. § 21.2(b)(2) (1981).

DOE argues that Dillon's June 24 request that its objections be considered a protest indicates that the firm's June 18 letter to DOE was not intended as a protest to the agency. The agency further insists that Dillon's oral request on June 24 did not constitute a protest. DOE directives provide that oral protests which are not confirmed in writing within 10 days may be disregarded. Therefore, DOE has restricted the agency report to the question of timeliness and declined to file a report on the merits of the protest.

For the reasons discussed below, we find the protest timely.

We cannot conclude from the record that Dillon clearly knew the basis of its protest from the June 17 conversation during which DOE asserts the protester was told that award was made to White based on the fact that the coupler would not have to be purchased. Dillon's June 18 letter to DOE expressed Dillon's understanding that the order was awarded to White because of price, which included the optional coupler. The protester further stated that it understood from the RFQ that the coupler would be used as a replacement part and had quoted a price for the item in order to comply with the terms of the RFQ. Dillon expressed the belief that the firm misunderstood the RFQ, requested that DOE review the matter due to Dillon's lower price for the units, and asked to meet with DOE at the agency's earliest convenience. In our opinion, Dillon's letter demonstrates that the firm was not sufficiently informed on June 17 of the basis for the award and that Dillon diligently requested a debriefing conference.

From the notes of the conference on June 24 submitted by DOE, it is obvious that the debriefing satisfied some of the protester's concerns because not all the matters raised during the conference have been included in Dillon's protest. Moreover, the conference provided Dillon's first opportunity to review White's quotation. Dillon first challenged White's compliance with the RFQ specification features and delivery basis during the debriefing. Although Dillon initially complained to DOE that White did not

meet the pneumatic road tire and sander specifications, Dillon's protest to our Office concerns only the tire requirement. For these reasons, we cannot conclude that the debriefing served no useful purpose in informing Dillon of the bases for protest.

Dillon's participation in the debriefing is consistent with our policy urging protesters to seek resolution of their complaints initially with the contracting agency. 4 C.F.R. § 21.2(a) (1981); Lambda Corporation, 54 Comp. Gen. 469, 470 (1974), 74-2 CPD 312. Notwithstanding DOE's position to the contrary, we find that Dillon was aware of the bases of its protest as a result of the June 24 debriefing, requiring a protest to DOE or to our Office within 10 working days. 4 C.F.R. § 21.2(b)(2) (1981). Because Dillon protested to our Office within that period, we find the protest timely and will consider it on the merits. Lambda Corporation, supra; see BDM Corporation, B-201291, June 26, 1981, 81-1 CPD 532.

Accordingly, we request that DOE submit a documented report on the merits of Dillon's protest as expeditiously as possible.

Harry R. Van Cleve
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Acting General Counsel